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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SERGE HAUMONT

Appeal 2009-000664
Application 09/806,939
Technology Center 2600

Decided: January 20, 2010

Before ALLEN R. MACDONALD, *Vice Chief Administrative Patent Judge*,
JOSEPH F. RUGGIERO and MAHSHID D. SAADAT, *Administrative
Patent Judges*.

RUGGIERO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Final Rejection of claims 3, 7, 20-22, and 25-31, which are all of the pending claims. Claims 1, 2, 4-6, 8-19, 23, and 24 have been canceled. We have jurisdiction

under 35 U.S.C. § 6(b).

We affirm.

Rather than reiterate the arguments of Appellant and the Examiner, reference is made to the Brief (filed July 24, 2007), the Answer (mailed January 3, 2008), and the Reply Brief (filed February 29, 2008) for the respective details. Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the Briefs have not been considered and are deemed to be waived (*see* 37 C.F.R. § 41.37(c)(1)(vii) (2008)).

Appellant's Invention

Appellant's invention relates to the allocation of a temporary identity to at least one mobile station by a network element. The network element allocating the temporary identity encodes at least part of its own identifier into the temporary identity. The temporary identity is used by communication system elements, such as a base station controller, to determine the network element to which the communication system elements should send packets addressed to a particular mobile station. (*See generally* Spec. 9:30-10:10).

Claim 20 is illustrative of the invention and reads as follows:

- 20. A cellular network comprising:
 - at least one network element configured to allocate a temporary identity to at least one mobile station, wherein the temporary identity includes at least a part of an identifier indicating the network element that allocates the temporary identity; and
 - a database element configured to:
 - receive an inquiry including the at least part of the identifier of

the network element that allocates the temporary identity and a paging area identifier; and

determine, based on the inquiry, an address of the network element which allocated the temporary identity.

The Examiner relies on the following prior art references to show unpatentability:

Onoe	US 5,361,396	Nov. 1, 1994
Sawyer	US 5,920,814	Jul. 6, 1999 (filed Apr. 30, 1997)
Mademann	US 6,081,723	Jun. 27, 2000 (filed Mar. 26, 1997)
Monrad	US 6,208,628 B1	Mar. 27, 2001 (filed Jan. 14, 1998)
Huttunen	US 6,356,761 B1	Mar. 12, 2002 (filed Aug. 24, 1998)
Tiedemann, Jr. (Tiedemann)	US 6,381,454 B1	Apr. 30, 2002 (filed Oct. 10, 1996)
Wallentin	US 2002/0086685A1	Jul. 4, 2002 (eff. filed May 5, 1998)

The Examiner's Rejections

Claims 20, 22, 25, 26, and 28 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Tiedemann.

Claims 3 and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tiedemann in view of Sawyer, Onoe, and Monrad.

Claim 21 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Tiedemann in view of Huttunen.

Claim 27 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Tiedemann in view of Mademann.

Claims 29-31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wallentin in view of Tiedemann.

ISSUES

The pivotal issues before us are whether Appellant has demonstrated that the Examiner erred in finding that:

- a) Tiedemann discloses a cellular network in which a temporary identity allocated by a network element to a mobile station includes at least part of the identifier of the allocating network element; and
- b) an ordinarily skilled artisan would have recognized and appreciated that the various formats suggested by Tiedemann for the Temporary Reference Number (TRN) identifier would necessarily include “3 to 5 bits” of the allocating network element identifier.

FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence:

1. Appellant discloses that the temporary identifier or TLLI assigned to a mobile station by a network element “can be linked to a specific network element by means of a suitable database. (Spec. 12:18-19).
2. Appellant further discloses that a network element that receives a temporary identity or TLLI “can derive the corresponding network element B by using the routing area identifier....” (Spec. 12:20-21).
3. Tiedemann discloses (Fig. 1 and col. 2, ll. 28-35) a mobile station communication system with an over-the-air service programming feature in which a Temporary Reference Number (TRN) is allocated to the mobile station by a mobile switching center (MSC).

4. Tiedemann also discloses (col. 6, ll. 29-50) that the TRN is associated with the mobile station and identifies the MSC.

5. Tiedemann further discloses (col. 8, ll. 11-21) that attributes of the TRN include mobile station identifiability and MSC addressability enabling other network resources to uniquely identify the MSC servicing the mobile station.

PRINCIPLES OF LAW

1. ANTICIPATION

It is axiomatic that anticipation of a claim under § 102 can be found if the prior art reference discloses every element of the claim. *See In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986) and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458 (Fed. Cir. 1984).

In rejecting claims under 35 U.S.C. § 102, “[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation.” *Perricone v. Medicis Pharmaceutical Corp.*, 432 F.3d 1368, 1375-76 (Fed. Cir. 2005), citing *Minn. Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1565 (Fed. Cir. 1992). “Anticipation of a patent claim requires a finding that the claim at issue ‘reads on’ a prior art reference.” *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed Cir. 1999) (“In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is

anticipated, regardless of whether it also covers subject matter not in the prior art.”) (internal citations omitted).

2. OBVIOUSNESS

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). “[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Furthermore,

[“]there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness” [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.

KSR Int’l. Co. v. Teleflex Inc., 550 U.S. 398, 418 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

ANALYSIS

35 U.S.C. § 102(e) REJECTION

Claims 20, 22, 25, 26, and 28

Appellant's arguments in response to the Examiner's anticipation rejection, based on Tiedemann, of independent claims 20, 25, 26, and 28 assert that the Examiner has not shown how each of the claimed features is present in the disclosure of Tiedemann so as to establish a prima facie case of anticipation. Appellant's arguments recognize that Tiedemann indeed discloses that a mobile station temporary identity (temporary reference number (TRN) in Tiedemann's terminology) is allocated which *identifies* the mobile switching center (MSC) which allocated it and the mobile station to which it is allocated. Appellant's arguments (App. Br. 12-15; Reply Br. 3-7), however, focus on the contention that, in contrast to the claimed invention, Tiedemann does not disclose that the mobile station temporary identity *includes* at least part of an identifier indicating the network element that allocated the temporary identity.

We do not find Appellant's arguments to be persuasive of any error in the Examiner's stated position (Ans. 4, 5, and 14). Appellant, while not disputing that Tiedemann does disclose the allocation of a mobile station temporary identity number as previously discussed, nonetheless, argues (App.Br. 13; Reply Br. 6) that any identification of the allocating MSC in Tiedemann could be made only by cross-referencing or linking the temporary identity number to a look-up table or database. To whatever extent, however, Appellant is arguing that the claim term "includes" must be interpreted as requiring a self-contained group of digits or symbols directly identifying the allocating mobile station, we find no clear support in

Appellant's disclosure for the interpretation urged by Appellant in the Briefs.

To the contrary, Appellant's Specification indicates at page 12, lines 18-19 that the "temporary identity or TLLI ... can be *linked* to a specific network element by means of a suitable database." (Emphasis added.). Further, Appellant's Specification discloses at page 12, lines 20-21 that a network element that receives a temporary identity or TLLI "can *derive* the corresponding network element by using a routing area identifier...." (Emphasis added.).

Appellant's arguments (App. Br. 14-15; Reply Br. 7) also do not convince us of any error in the Examiner's finding (Ans. 5 and 14) that the ordinarily skilled artisan would have recognized and appreciated that Tiedemann's suggested formats (col. 2, ll. 27-37 and col. 6, ll. 29-50) for the Temporary Reference Number (TRN) identifier would necessarily include "3 to 5 bits" of the allocating network element identifier as set forth in independent claims 26 and 28.

In view of the above discussion, since Appellant has not demonstrated that the Examiner erred in finding that all of the claimed limitations are present in the disclosure of Tiedemann, the Examiner's 35 U.S.C. § 102(e) rejection of independent claims 20, 25, 26, and 28, as well as dependent claim 22 not separately argued by Appellant, is sustained.

35 U.S.C. § 103(a) REJECTIONS

Claims 3 and 7

The Examiner's obviousness rejection of claims 3 and 7, based on the combination of Tiedemann, Sawyer, Onoe, and Monrad is sustained as well.

Appellant's arguments (App. Br. 15; Reply Br. 7-9) rely on the previously asserted arguments alleging deficiencies in the anticipatory disclosure of Tiedemann with respect to rejected claims 20, 22, 25, 26, and 28, which arguments we have found to be unpersuasive for all of the previously discussed reasons.

Claims 21 and 27

We also sustain the Examiner's obviousness rejection of dependent claims 21 and 27 based on the separate combination of Tiedemann with Huttunen and Mademann. We find no error in the Examiner's application (Ans. 9-11) of the domain name server and GPRS support node teachings, respectively, of Huttunen and Mademann to the communication system disclosure of Tiedemann.

Claims 29-31

The Examiner's obviousness rejection of independent claim 31, and its dependent claims 29 and 30, based on the combination of Wallentin and Tiedemann is also sustained. Appellant's arguments (App. Br. 17; Reply Br. 10) again rely on the alleged deficiency of Tiedemann in disclosing a mobile station temporary identity which includes an identifier of the allocating network element, which arguments we have found to be unpersuasive.

CONCLUSION

Based on the findings of facts and analysis above, we conclude that Appellant has not shown that the Examiner erred in rejecting claims 20, 22,

25, 26, and 28 for anticipation under 35 U.S.C. § 102(e), nor in rejecting claims 3, 7, 21, 27, and 29-31 for obviousness under 35 U.S.C. § 103(a).

DECISION

The Examiner's decision rejecting claims 20, 22, 25, 26, and 28 under 35 U.S.C. § 102(e) and claims 3, 7, 21, 27, and 29-31 under 35 U.S.C. § 103(a) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

gvw

PILLSBURY WINTHROP SHAW PITTMAN, LLP
P. O. BOX 10500
MCLEAN, VA 220102